

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9068 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARATSINH VAJUBHA VALA

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ N POPAT for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

#. The District Magistrate, Rajkot, passed an order on September 1, 1999 in exercise of powers under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detainee under the provisions of the PASA Act.

#. The detaining authority took into consideration seven offences registered against the detainee under the Bombay Prohibition Act. The authority also considered the statements of five anonymous witnesses and came to a conclusion that the detainee is a "bootlegger" and that his activities are detrimental to the public order. He is therefore, required to be immediately prevented from pursuing his illegal and anti-social activities. While considering the statements of anonymous witnesses, the detaining authority deemed it proper in public interest to exercise powers under section 9(2) of the PASA Act by claiming privilege of not disclosing the identity of these witnesses as according to the detaining authority, these witnesses genuinely suffered from fear qua the detainee in respect of the person and property of the witnesses.

#. The detainee/petitioner challenges the order of detention on various grounds. However, Mr. Patel, learned advocate appearing on behalf of Mr. M.N. Popat, learned advocate for the petitioner has restricted his arguments to the ground of improper exercise of powers under section 9(2) of the PASA Act. According to him, the detaining authority has not personally verified the genuineness and correctness of the statements of the witnesses and the fear expressed by the anonymous witnesses and therefore, the exercise of privilege under section 9(2) of the PASA Act is not on the basis of subjective satisfaction but only on the basis of the statements recorded by the proposing authority. Mr. Patel therefore, submitted that this exercise is not proper which has affected the right of the detainee of making an effective representation and the petition may therefore, be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition. According to him, the statements have been verified by the Dy.S.P. and the detaining authority has accepted this verification and therefore, the exercise of powers under section 9(2) cannot be considered as improper and the petition may, therefore, be dismissed.

#. Considering the rival side contentions, what is required to be addressed to by this Court is the question whether the detaining authority has properly exercised the powers under section 9(2) of the PASA Act.

#. In this regard, it may be noted that on perusal of the statements of anonymous witnesses, it is clear that the statements have not been verified at all by the

detaining authority. Against this, if the grounds of detention are considered, the detaining authority also does not state that it has verified the statements. All that is stated is that the authority deems it proper to exercise the powers under section 9(2) of the PASA Act in public interest for the reasons that the witnesses have expressed fear qua the detainee in their statements and therefore, their identity is given anonymity. The authority does not state anything about having personally verified the genuineness or correctness of the fear expressed by the witnesses and therefore, the power is exercised by the detaining authority in the absence of subjective satisfaction. This would vitiate the exercise of powers under Section 9(2) of the PASA Act and the order of detention as the right of the detainee of making an effective representation contemplated under Article 22(5) of the Constitution of India gets infringed.

#. It is true that the statements have been verified by the Dy.S.P. but it cannot be accepted that the detaining authority considered this verification while passing the order since the authority does not even refer to verification made by the Dy.S.P. while considering powers under Section 9(2) of the PASA Act. The argument of Mr. Dave, therefore, cannot be accepted.

#. For the foregoing reasons, the order of detention cannot be supported and it deserves to be quashed by allowing the petition.

#. This petition is allowed. The impugned order of detention dated September 1, 1999 is hereby quashed and set aside. The detainee - Kishorsinh Vajubha Vala, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-